

**RHODE ISLAND STATE LABOR RELATIONS BOARD
GENERAL RULES & REGULATIONS**

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(Italicized print is new language.)

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GENERAL RULES AND REGULATIONS (Adopted May 20, 1943 - Effective June 1, 1943) Amended 11/01/02 **12/01/03**

1.00.2 The Rhode Island State Labor Relations Board:

The Rhode Island State Labor Relations Board is a seven **(7)** member Board created within the Department of Labor and Training. However, neither the Director of the Department of Labor and Training, nor any board or other agency shall in any way review, modify or reverse any decision or finding of the Board, or supervise or control the Board, in its exercise of its powers, or performance of its duties, as defined by law.

The Board is composed of seven (7) members who are appointed by the Governor, with the advice and consent of the Senate. Three (3) members of the Board represent labor, three (3) members represent management, including at least one (1) representative of local government, and one **(1)** member is a representative of the public generally. The appointments are for terms of six (6) years, and the Chairperson is appointed by the Governor. Two (2) members of the Board constitute a quorum.

Reason: Add numbers in parenthesis for consistency.

1.00.3 Organization and Operation:

The seven **(7)** member Board generally meets monthly to decide cases pending before it. In addition, the Board meets several additional times per month to hold formal hearings on pending matters. At the present time, the Board's staff consists of its Administrator, two **(2)** Investigative Agents and one **(1)** secretary. The Board also retains the services of outside, independent legal counsel. Pursuant to statute and to the rules and regulations contained herein, the Board often delegates some of its powers and duties to its administrative staff.

Reason: Add numbers in parenthesis for consistency.

6.01.4 Requirement to Affix Case Law:

Every brief submitted to the Board, for its consideration, shall have appended to it, a copy of every **principal** federal case cited therein.

Reason: Only need copies of principal cases because some are minor cases not requiring review of entire case by Board.

7.01.5 Powers and Duties of the Board at Hearings:

During the course of any hearing, the Board shall have the full authority to control the conduct and procedure of the hearings, and the records thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections made during the course of the hearing. It shall be the duty of the Board to see that a full inquiry is made into all the facts in issue, and to obtain a full and complete record of all facts necessary for a fair determination of the issues. In any hearing, the Board shall have the right to call and examine witnesses, to direct the production of papers or documents, and to introduce into the record said papers or documents. ***Any party who fails or refuses to comply with a Board directive, in a timely fashion, may be sanctioned by the Board, as set forth by Section 7.03.3 herein.***

Reason: Providence School election petition – Employer did not provide documents directed by Board at formal hearing within the time frame outlined by the formal hearing record.

7.02.3 Failure to Appear; Sanctions:

A charging party, or petitioner, who fails to appear at the informal hearing may have its petition or charge dismissed. ***Any party who fails to appear within fifteen (15) minutes of the scheduled hearing time, without good cause, whether the hearing is relative to an unfair labor practice charge, or a petition for certification or clarification, may be considered to have "Failed to Appear."***

Reason: Provide parties with time frame in which, if they do not appear, hearing will be cancelled.

7.03.2 - Parties Required to Appear:

Unless the case has been settled (and the Board has been notified, in writing, of the settlement ***at least two (2) business days prior to the scheduled hearing date***), parties are required to appear at the time and place, on the date set forth in the notice of hearing. ***Parties shall not postpone or cancel any hearing scheduled by the Board, without first receiving approval from the Board, its Agent(s) or Administrator.***

Reason: Rectify parties canceling formal hearings without first receiving permission from this office.

7.03.3 – Failure to Appear ***or to Comply with Board Directive(s)***; Sanctions:

Parties who fail to appear, ***or to comply with a Board Directive(s)***, without good cause, at any hearing may:

- a) Be defaulted.

- b) Be assessed costs, including stenographer's expenses, associated with the rescheduling.
- c) Be considered to have forfeited any and all objections it may have had.

Any party who fails to appear within fifteen (15) minutes of the scheduled hearing time, whether the hearing is relative to an unfair labor practice charge, or a petition for certification or clarification, may be considered to have "Failed to Appear."

Reason: Providence School case, employer did not provide documents in time frame directed by Board at formal hearing. Add to include directive for production of documents or witness. Provide parties with time frame in which, if they do not appear, hearing will be cancelled.

7.03.4 Application for Subpoenas:

Any party to the proceeding, who is not represented by legal counsel, may apply to the Board for the issuance of a subpoena or subpoenas duces tecum, requiring the attendance, during a hearing, of any person, party, or witness, and directing the production, at a hearing, of any books, records, or correspondence, or other evidence relating to any matter under investigation or any question before the Board. Such application, to be considered timely, shall be made no later than fifteen (15) business days prior to the scheduled hearing. The application shall be in writing, and it shall specify the name of the witness or documents or things, the production of which is desired, with such particularity as will enable such documents to be identified for purposes of production, the return date desired, as well as the general nature of the facts to be proved by the witness, or the documents, or things sought to be produced. An original and two **(2)** copies of such application shall be made and filed with the Board, and need not be served on any other party. The Board, in its discretion, or its Agent(s) or Administrator, may grant or deny such application, in whole or in part, for good cause shown. The Board, or its Agent(s) or Administrator, may make such subpoena returnable forthwith, or at any other time, within its discretion. The Board's subpoena shall be issued and served ***in person or*** by certified mail, return receipt requested. ***If served personally, an original of the signed subpoena shall be conclusive proof of service. If served by certified mail,*** the return receipt shall be filed in the record of the proceedings and shall be conclusive proof of service.

Parties represented by legal counsel shall not have the right to request the Board to issue a subpoena.

Reason: With sufficient staff, it is preferable to serve subpoenas personally. Add number in parenthesis for consistency.

New Section:

7.03.6 Introduction of Exhibits at Formal Hearing:

Any party who wishes to introduce exhibits at a formal hearing must provide the Board with nine (9) copies of each exhibit introduced, as well as provide one (1) copy for each opposing party or parties participating in the formal hearing.

Reason: Notification to parties of proper number of copies for introduction of exhibits. Not currently included in Rules and Regulations

Numbers for remaining sections need to be changed.

~~7.03.6~~ **7.03.7** Oral Arguments or Briefs: Unfair Labor Practice Hearings:

~~7.03.7~~ **7.03.8** Oral Arguments or Briefs: Representation Hearings:

~~7.03.8~~ **7.03.9** Administrative Requirements for Written Briefs

b) Any brief containing a ***principal*** citation to any non-Rhode Island case shall be accompanied by an appendix, which shall contain copies of the entire case for all ***principal*** non-Rhode Island cases cited therein.

Reason: Some cites are minor and do not require entire case for review. To be consistent with Section 6.01.4.

d) Briefs shall be filed by the date set by the Board upon the conclusion of the formal hearing. The Board's Administrator shall have the discretion, upon good cause shown, to grant extensions of time for filing briefs. All requests for filing extensions must be made, ***in writing and by agreement of the parties***, no later than five (5) business days prior to the filing date.

Reason: Clarify that request must be in writing and by agreement of the parties.

8.01.3 Petition: Withdrawal or Amendment:

At any time before the issuance of a notice of hearing on a petition for investigation and certification, the Board may permit the amendment of the petition, or its withdrawal, in whole or in part. At any time after the issuance of such notice of hearing, the Board, upon motion, may permit withdrawal of the petition, in whole or in part, and the Board may permit amendment thereof. ***Withdrawal of the petition, in whole or in part, shall not be permitted, once the Board's Notice of Election has been posted.***

Reason: Council 94 had called to find out how close to an election a petition for representation may be withdrawn. - this issue is not addressed in the current rules and regulations.

8.02.4 Elections: Terms and Conditions:

If the Board determines, as a part of its investigation of a question or controversy concerning representation, that an election or elections by secret ballot shall be held, it shall provide that such election or elections be conducted by an Agent of the Board at such time and place, and upon terms or conditions, as the Board may specify.

Every effort shall be made to schedule the election to reasonably accommodate all work shifts. Notices of observers for elections must be sent, in writing, to the Board's offices no later than five (5) business days prior to the date of the election. Copies must be sent all other parties, and the notice shall contain a certification of said notification. ***Failure to provide the appropriate written notification, as outlined above, may result in a party being denied the opportunity to have an observer present at the election.***

Reason: Provide the Board with the ability to deny an observer's attendance at an election if the party observing for does not notify the Board in writing, in advance of the election, and certify the name of the observer to all participating parties.

8.02.6 Determination of the Scope of the Bargaining Unit:

d) Bargaining units will be decided on the basis of whether or not the particular employees share a "Community of Interest", and to determine a unit that has a direct relevancy to the circumstances in which collective bargaining is to take place. In applying the "Community of Interest" standard, the Board may consider a number of criteria including, but not limited to: those factors set forth in the definition of Community of Interest at Section 1.01.8 herein.

Reason: Capitalization to be consistent with 8.02.7 capitalization.

8.02.7 Exclusion of Ineligible Employees; Criteria:

b) In determining whether an employee is "Supervisory," the Board will apply the following criteria:

- 1) *An employee who has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees.*
- 2) *An employee who has the authority to responsibly direct other employees.*
- 3) *An employee who has the authority to adjust employee grievances.*
- 4) *An employee who has the authority to effectively recommend any of the above action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.*

The indicia of authority found in the definition of Supervisory shall be disjunctive; that is, a valid exercise of any one of the indicia of supervisory authority shall be sufficient to exclude that position from collective bargaining.

Reason: Criteria not contained in existing rules and regulations – taking from definition in section 1.01. Capitalization and quotes to be consistent with subsection (a).

8.02.12 Re-Run and Run-Off Elections:

c) The ballot provided for a choice among two or more employee organizations and "no representation"; and no one choice receives a majority of the votes cast, a run-off election will be held among the top two vote-getters, ***in accordance with RI General Laws 28-7-18.*** ~~whether it be between two employee organizations, or one employee organization and "no representation".~~

Reason: Run-off elections are discussed in RIGL 28-7-18.

8.04.1 Contents of Petition; Sufficiency:

c) The name and address ~~or~~ **of** the certified bargaining agent, Board's certification number, and date of Board certification.

Reason: Typographical error – “or” should be “of” in this paragraph.

e) The title of each disputed position, name(s) of individual(s) holding the said title(s), length of time the incumbent(s) held the position(s). A copy of the job description(s), if available, should be attached to the request.

Reason: Change title to title(s) and add an “s” to description(s) – for consistency

8.04.2 Processing of Petition:

Upon receipt of a petition, an informal hearing shall be scheduled within thirty (30) days. If, upon conclusion of the informal hearing, the parties cannot agree to the accretion of the position(s), the Board's Administrator shall cause an investigation to commence.

Upon completion of the investigation, the Agent shall provide a written investigative report to the Board and to the parties. Upon receipt of the Agent's report, ~~the parties~~ **each party** shall have a period of thirty (30) days from the date of mailing to file any written responses or statement it deems appropriate, under the circumstances. The Board's Administrator shall have the discretion, upon good cause shown, to grant one (1) extension of the date for filing a response. All requests for filing extensions must be made no later than five (5) business days prior to the filing date, **in writing and by agreement of the parties**. Any party filing a response to the Investigator's report **must send an original and eight (8) copies to the Board's Office, and** must send a copy to the opposing party or parties, and must certify the same therein. At the end of this thirty (30) day response period, the record of proceedings shall be closed, and the case shall be referred to the Board for its consideration. The Investigator's report and the responses of the parties shall be considered as, and included within, the public record on the matter.

Reason: Grammatical correction to have singular form of “each party” agree with “it”. Requests for extension to filing date should be made in writing and by agreement of the parties, to be consistent with requests for extension of briefs. To clarify that the Board requires an original and eight (8) copies of the responses.

8.04.3 Formal Hearings after Preliminary Determination to Accrete:

In the event the Petition seeks accretion of positions which were not part of the original certification, or as previously amended, and the Board finds that the positions appear to be appropriate for accretion, the parties will be notified of the Board's preliminary determination; and the matter will be scheduled for formal hearing. The parties may elect to waive the formal hearing by filing a written waiver, ~~within thirty (30) days of the Board's initial determination~~, indicating their agreement with the Board's decision. **The written waiver must be filed no later than five (5) business days prior to the scheduled formal hearing date.**

Reason: Formal hearings are no longer scheduled three (3) months out. Hearings may be scheduled less than 30 days after Board's preliminary determination at the Board Meeting to accrete. Written waivers should be submitted at least five (5) business days prior to formal hearing to be in accordance with the Board's Rules and Regulations

regarding cancellation and/or postponement of formal hearings.

8.05.1 Contents of Petition: Sufficiency:

- c) The name and address ~~or~~ **of** the certified bargaining agent, Board's certification number, and date of Board certification.

Reason: Typographical error - change "or" to "of"

- e) The title of each disputed position, name(s) of individual(s) holding the said title(**s**), length of time the incumbent(s) held the position(s). A copy of the job description(**s**), if available, should be attached to the request.

Reason: Change title to title(s) and add an "s" to description(s) – for consistency.

8.05.2 Processing of Petition:

Upon receipt of a petition, an informal hearing shall be scheduled within thirty (30) days. If, upon conclusion of the informal hearing, the parties cannot agree to the removal of the position(s), the Board's Administrator shall cause an investigation to commence.

Upon completion of the investigation, the Agent shall provide a written investigative report to the Board and to the parties. Upon receipt of the Agent's report, ~~the parties~~ **each party** shall have a period of thirty (30) days from the date of mailing to file any written responses or statement it deems appropriate, under the circumstances. The Board's Administrator shall have the discretion, upon good cause shown, to grant one (1) extension of the date for filing a response. All requests for filing extensions must be made no later than five (5) business days prior to the filing date, ***in writing and by agreement of the parties.*** Any party filing a response to the Investigator's report ***must send an original and eight (8) copies to the Board's Office, and*** must send a copy to the opposing party or parties, and must certify the same therein. At the end of this thirty (30) day response period, the record of proceedings shall be closed, and the case shall be referred to the Board for its consideration. The Investigator's report and the responses of the parties shall be considered as, and included within, the public record on the matter.

Reason: Grammatical correction to have singular form of "each party" agree with "it". Requests for extension to filing date should be made in writing and by agreement of the parties, to be consistent with requests for extension of briefs. To clarify that the Board requires an original and eight (8) copies of the responses.

8.05.3 Formal Hearings After Preliminary Determination to Remove:

After consideration of the matter, the Board may either order additional investigation or informal hearings, grant or deny the requested action and set the matter down for formal hearing, or dismiss the petition pursuant to R.I.G.L. 28-7-9 (d). If the petition is preliminarily granted, the matter will then be set down for a formal hearing. The parties may elect to waive the formal hearing by filing a written waiver, ~~within thirty (30) days of the Board's initial determination,~~ indicating their agreement with the Board's decision.

The written waiver must be filed no later than five (5) business days prior to the scheduled formal hearing date.

Reason: Formal hearings are no longer scheduled three (3) months out. Hearings may be scheduled less than 30 days after Board's preliminary determination at the Board Meeting to remove. Written waivers should be submitted at least five (5) business days prior to formal hearing to be in accordance with the Board's Rules and Regulations regarding cancellation and/or postponement of formal hearings.

New Section

9.01.9 Unfair Labor Practice Charges Held in Abeyance:

Once an unfair labor practice charge has been filed, the matter will be scheduled for informal hearing. The Board will only hold a charge in abeyance, upon request by the charging party, with the consent of the opposing party. Status letters will be sent to the charging party every sixty (60) days, requesting an update. Failure to respond to any request for a status update may result in the unfair labor practice charge being dismissed.

Reason: Similar language is contained in 9.02.12 relative to holding ULP's in abeyance after complaint is issued. We do hold in abeyance prior to issuance of complaint, by agreement of parties, and we do send out status letters. If there is no response to the status letter, we do dismiss these cases.

9.02.3 Service and Filing of Answer:

The respondent against whom the complaint is issued shall have the right to file an answer within ~~ten (10)~~ **five (5)** business days from the service of the complaint. Such answer shall be in writing, the original being signed by the respondent or his, her or its representative. The respondent or his, her or its representative shall file, with the Board, an answer and copies thereof for each party to the proceeding.

Reason: To conform to RIGL 28-7-21, which states five (5) days to respond to complaint.

9.02.12 Complaints Held in Abeyance:

Once a complaint has been issued, the matter will be placed on the formal hearing calendar. The Board will only hold a complaint in abeyance, upon request by the charging party, with the consent of the opposing party. Status letters will be sent to the charging party every sixty (60) days, requesting an update, ~~up to a total of 180 days.~~ Failure to respond to any request for a status update may result in the charge and complaint being dismissed. ~~If the parties have not resolved the matter upon the conclusion of 180 days after abeyance has been granted, there will be a presumption that the matter is unresolvable, and the case will be placed back on the Board's formal hearing calendar, unless the matter is being held in abeyance pending a court decision.~~

Reason: There is no reason to hold the parties to 180 days if they are sincerely trying to resolve. We allow more time as long as they keep the Board updated.

SECTION 12.01 AGENTS AND LEGAL COUNSEL OF THE BOARD

12.01.1 Powers and Duties of the Administrator:

The Administrator of the Board, and Investigative Agents, in addition to all powers hereinabove conferred upon them, are hereby designated by the Board as its Agent(s):

- (1) To conduct and be in full charge and control of any and all informal hearings and the records thereof.
- (2) *To accept service of subpoenas duces tecum for Board records.*
- (3) *In the event the Board is without legal counsel for any period of time, to accept service on court summons, subpoenas, or complaints, on appeals of Board cases.*
- (2) (4) To do any and all things necessary and proper to effectuate the policies of the Act and these general rules and regulations.

REASON: Clarify duties of administrator, especially in relation to subpoenas and court issues.

12.01.3 Powers and Duties of the Legal Counsel:

Pursuant to R.I. General Laws 28-7-7, the Board has the authority to select its own legal counsel.

- (1) *To attend formal hearings.*
- (2) *To prepare Board decisions.*
- (3) *To accept service, on behalf of the Board, of court summons, subpoenas, or complaints, relative to Labor Board matters.*
- (4) *To represent the Board before the RI Superior Court and the RI Supreme Court, on appeals; and to prepare briefs.*
- (5) *To advise the Board on legal questions and on the Board's rights and autonomy under the Act.*
- (6) *To represent the Board before tribunals, committees, court, and on legislative matters, when requested.*
- (7) *To do any and all things necessary and proper to effectuate the policies of the Act and these general rules and regulations.*

REASON: Clarify duties of Board's legal counsel, especially in relation in court issues.

42-01-3 12.01.4 Not Limiting Board to Make Special Designation of Agents:

The foregoing designations are not to be construed to limit the power of the Board to make such special designations of Agents, consistent with the law, as may, in its discretion, be necessary or proper to effectuate the policies of the Act, nor shall the foregoing designations be construed as limiting the power of the Board, at any time, to confer upon its Agent or Agents, such additional and different duties as it may deem necessary and proper.

REASON: Re-number section.

14.01.3 Application of General Rules and Regulations:

These general rules and regulations, and any amendments thereto, shall govern all proceedings filed with the Board on or after, ~~November 1, 2002~~ **December 1, 2003**, and all other proceedings or charges then pending, except to the extent that, in the judgment of the Board, their application to such proceedings or pending charges and petitions would not be feasible or would work an injustice, in which event, these general rules and regulations shall not apply.

Reason: Effective date for proposed changes.